**BEFORE THE APPEALS BOARD**
**FOR THE**
**KANSAS DIVISION OF WORKERS COMPENSATION**

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| **SHANDALIE SHAFER** | ) | |
| Claimant | ) | |
| VS. | ) | |
| | ) | Docket No. 259,219 |
| **AMARR COMPANY, INC.** | ) | |
| Respondent | ) | |
| AND | ) | |
| | ) | |
| **AIG** | ) | |
| Insurance Carrier | ) | |

## ORDER

Respondent appeals Administrative Law Judge Brad E. Avery's October 19, 2000, preliminary hearing Order for Medical Treatment.

## ISSUES

The ALJ granted claimant's request for medical treatment for bilateral upper extremity injuries claimant suffered while working for the respondent.

On appeal, respondent contends claimant's current need for medical treatment is not the result of an accident or a series of accidents while working for the respondent. But such need is the result of a subsequent intervening accident that occurred as claimant was typing while attending a computer typing class after claimant left respondent's employment on August 17, 2000. Additionally, respondent argues the ALJ exceeded his jurisdiction when he appointed Dr. Lynn D. Ketchum as the authorized treating physician for claimant's bilateral upper extremity injuries.

Conversely, claimant argues the typing activity she performed for two hours in two different computer typing classes she attended on August 31, 2000, and September 5, 2000, was not a significant or traumatic event that would be characterized as a new and separate accident causing a second injury. Claimant also argues that the ALJ did not exceed his jurisdiction when he appointed a neutral physician, Dr. Ketchum, as claimant's authorized treating physician.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the parties' briefs, the Appeals Board finds the preliminary hearing Order should be affirmed.

The respondent does not dispute that claimant's repetitive work activities while she was employed by the respondent caused injuries to her bilateral upper extremities. In fact, respondent voluntarily provided claimant with medical treatment for those injuries through September 8, 2000. Respondent, however, contends that after claimant left respondent's employment on August 17, 2000, she attended school to become a respiratory therapist. During the first and second weeks of the school, claimant attended two computer typing classes and typed for two hours during each of those classes. Although claimant testified those two computer typing classes did not cause any worsening of her upper extremity symptoms, respondent claims this limited typing activity constituted a new and separate intervening accident. Thus, respondent argues it has no further liability for the care and treatment of claimant's upper extremity problems as claimant suffered an intervening accident not related to her employment with respondent.

Claimant testified she first noticed a burning sensation in her right wrist while she was performing repetitive work activities for the respondent on August 3, 2000. Claimant reported the problem to her supervisor, and respondent directed claimant for examination and treatment to Dr. Michael J. Geist.

Dr. Geist saw claimant on August 3, 2000. Dr. Geist found claimant with complaints of pain in her right wrist and some numbness into the right thumb. His assessment was right wrist pain secondary to repetitive use. Claimant was given a splint to wear, instructed on home exercises, and anti-inflammatory medication was prescribed. Dr. Geist released claimant to light work limiting the use of her right hand.

Claimant testified she returned to her regular job but performed the job primarily with her left hand. Claimant is left-hand dominant. Claimant again returned to see Dr. Geist on August 10, 2000. At that time, as a result of claimant using her left hand only, she had also developed symptoms in the left hand. Dr. Geist increased claimant's restrictions from limited use of the right hand to limited use of both hands. When claimant returned to work with those restrictions, respondent placed claimant on a non-production time study job.

Claimant testified that her bilateral upper extremity symptoms improved some after she quit working on August 17, 2000. But claimant testified that before she started school on August 28, 2000, she still was symptomatic. Claimant also testified that the two typing classes she attended, where she typed for two hours in each of the classes, did not increase or worsen her bilateral upper extremity symptoms.

Although claimant terminated her employment with respondent on August 17, 2000, she remained under Dr. Geist's care and treatment for her bilateral upper extremity injuries.

Claimant returned to see Dr. Geist on September 8, 2000. But Dr. Geist was absent that particular day. Claimant was then seen by Dennis Sale, D.O., a physician associated with Dr. Geist. When claimant last saw Dr. Geist, he had instructed her to quit wearing her splint and also quit taking the anti-inflammatory medication. Dr. Sale found claimant with tenderness of the right wrist and tenderness going into the right thumb area. After Dr. Sale discovered that claimant had been typing in a computer typing course, he commented that the typing course probably was worsening or exacerbating her condition. But Dr. Sale's medical report of September 8, 2000, also noted that claimant told Dr. Sale, "[I]t was beginning to worsen slightly prior to starting the classes." Claimant also testified that Dr. Sale upset her and she did not particularly like Dr. Sale because he would not express an opinion on when claimant could expect improvement of her symptoms.

Claimant returned to see Dr. Geist on September 21, 2000. Claimant again had complaints of intermittent pain in both wrist areas and occasionally her hands felt swollen. After claimant had been examined by Dr. Sale, claimant dropped the computer typing classes. Dr. Geist's assessment was persistent bilateral upper extremity pain. Dr. Geist instructed claimant to continue with the anti-inflammatory medication, wearing splints, and her home exercises. Claimant was also advised to limit repetitive use of the hands. During this visit, Dr. Geist also showed claimant a letter from respondent's insurance carrier that notified claimant that the insurance carrier was denying any additional treatment for claimant's bilateral upper extremity injuries based on Dr. Sale's September 8, 2000, medical record. The insurance company interpreted that medical record to indicate the treatment claimant was presently receiving was for an exacerbation of her condition caused by the typing claimant had done unrelated to her employment with respondent.

Respondent argues that claimant suffered a new and separate accident while she was attending two typing classes where she typed for two hours in each of the classes on August 31, 2000, and September 5, 2000. This new and separate intervening accident is the cause of claimant's current bilateral upper extremity problems and need for medical treatment. Respondent cites the Kansas Supreme Court decision in *Stockman v. Goodyear Tire & Rubber Co.*, 211 Kan. 260, 505 P.2d 697 (1973), in support of its argument that claimant's current bilateral upper extremity problems and need for medical treatment are the result of a new and separate intervening accident. In *Stockman*, the Kansas Supreme Court rejected claimant's argument that his current back injury was a direct and natural result of his primary work injury. The Kansas Supreme Court held the natural consequence rule applies to a situation where claimant's disability gradually increases from a primary accidental injury but not when the increase in disability results from a new and separate accident. 211 Kan. at 263.

The Appeals Board, however, concludes the record, as it is compiled to date, falls short of proving that claimant's typing activities composed of two hours on August 31, 2000, and another two hours five days later on September 5, 2000, can be characterized as a new and separate intervening accident. The medical records and claimant's testimony are clear that claimant remained symptomatic after she terminated her employment with

respondent on August 17, 2000. The Appeals Board, therefore, concludes claimant's current condition is not the result of a new and separate intervening accident but is the natural consequence of her August 2000 primary work-related accidental injury.[1]

In regard to respondent's claim that the ALJ exceeded his jurisdiction when he appointed Dr. Ketchum as claimant's authorized treating physician, the Appeals Board concludes, at this point in the proceedings, it does not have jurisdiction to review that issue. The Appeals Board has ruled on numerous occasions that the ordering and/or providing of medical treatment falls within the authority of an administrative law judge at a preliminary hearing. This is not a jurisdictional issue listed in K.S.A. 1999 Supp. 44-534a, and the Appeals Board finds the ALJ did not otherwise exceed his jurisdiction in making the Order. Accordingly, the Appeals Board does not have jurisdiction at this point in the proceedings to review that issue.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Brad E. Avery's October 19, 2000, preliminary hearing Order for Medical Treatment should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this ____ day of December 2000.

BOARD MEMBER

c: Derek R. Chappell, Ottawa, KS
Matthew S. Crowley, Topeka, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director

[1] *See Gillig v. Cities Service Gas Co.*, 222 Kan. 369, 564 P.2d 548 (1977), and *Hernandez v. State of Kansas*, WCAB Docket No. 196,090 (April 1999).